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# In the Supreme Court of the United States

OCTOBER TERM, 1940

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No. 479

NORMAN J. PFAFF AND FRANK B. WALLACE, EXEC-  
UTORS OF ESTATE OF WILLIAM L. WALLACE, DEC'D,  
PETITIONERS\*

v.

GUY T. HELVERING, COMMISSIONER OF INTERNAL  
REVENUE

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ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED  
STATES CIRCUIT COURT OF APPEALS FOR THE SECOND  
CIRCUIT

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## MEMORANDUM FOR THE RESPONDENT

We do not oppose the granting of the petition for a writ of certiorari in this case.

The question involved is whether his share of income, earned but not yet received by a partnership, should be included in the gross income of a partner for the taxable period ending with his death, where both the partnership and the deceased partner kept books on the cash basis. The court below held that the deceased partner's share of income earned for the taxable period ending with his

death should be included in his gross income for that period. In this respect its decision is in direct conflict with the decision of the United States Circuit Court of Appeals for the Third Circuit in *Estate of Enright v. Commissioner*, 112 F. (2d) 919, pending on petition for certiorari, No. 436, October Term, 1940.

The Government has filed a petition for a writ of certiorari in the *Enright* case on the ground that it is in direct conflict with the decision of the Circuit Court of Appeals for the Second Circuit in this case (113 F. (2d) 114).

For the foregoing reason, the issuance of a writ of certiorari in the present case is not opposed.

Respectfully submitted,

FRANCIS BIDDLE,  
*Solicitor General.*

OCTOBER 1940.

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